

By: Hall

S.B. No. 85

A BILL TO BE ENTITLED

AN ACT

relating to the verification of employment authorization by state contractors and state grant recipients, including the use of the federal E-verify program, and to authorization for the suspension of certain licenses held by private employers for the knowing employment of persons not lawfully present in this state; authorizing a fee.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The heading to Chapter 2264, Government Code, is amended to read as follows:

CHAPTER 2264. CERTAIN RESTRICTIONS ON [USE OF CERTAIN] PUBLIC SUBSIDIES AND STATE CONTRACTS AND GRANTS

SECTION 2. Section 2264.101, Government Code, is transferred to Subchapter B, Chapter 2264, Government Code, redesignated as Section 2264.054, Government Code, and amended to read as follows:

Sec. 2264.054 [~~2264.101~~]. RECOVERY. (a) A public agency, local taxing jurisdiction, or economic development corporation, or the attorney general on behalf of the state or a state agency, may bring a civil action to recover any amounts owed to the public agency, state or local taxing jurisdiction, or economic development corporation under this subchapter [~~chapter~~].

(b) The public agency, local taxing jurisdiction, economic development corporation, or attorney general, as applicable, shall

1 recover court costs and reasonable attorney's fees incurred in an
2 action brought under Subsection (a).

3 (c) A business is not liable for a violation of this
4 subchapter [~~chapter~~] by a subsidiary, affiliate, or franchisee of
5 the business, or by a person with whom the business contracts.

6 SECTION 3. The heading to Subchapter C, Chapter 2264,
7 Government Code, is amended to read as follows:

8 SUBCHAPTER C. VERIFICATION OF NEW EMPLOYEES BY STATE CONTRACTORS
9 AND GRANT RECIPIENTS [~~ENFORCEMENT~~]

10 SECTION 4. Subchapter C, Chapter 2264, Government Code, is
11 amended by adding Sections 2264.1011, 2264.102, 2264.103, and
12 2264.104 to read as follows:

13 Sec. 2264.1011. DEFINITIONS. In this subchapter:

14 (1) "E-verify program" has the meaning assigned by
15 Section 673.001.

16 (2) "State agency" has the meaning assigned by Section
17 2103.001.

18 Sec. 2264.102. VERIFICATION BY CONTRACTORS. (a) A state
19 agency may not award a contract for goods or services within this
20 state to a contractor unless the contractor:

21 (1) registers with and participates in the E-verify
22 program to verify information of all new employees; or

23 (2) verifies the employment authorization status of
24 all new employees by requiring each employee to provide an
25 unexpired United States passport or:

26 (A) one of the following documents:

27 (i) an original or certified copy of a birth

1 certificate issued by a bureau of vital statistics for a state;

2 (ii) a Consular Report of Birth Abroad or
3 Certificate of Birth Abroad issued by the United States Department
4 of State;

5 (iii) a Certificate of United States
6 Citizenship issued by the federal Department of Homeland Security
7 or the United States Department of State including an
8 identification photograph; or

9 (iv) a Certificate of Naturalization issued
10 by the federal Department of Homeland Security or the United States
11 Department of State including an identification photograph; and

12 (B) one of the following documents:

13 (i) an unexpired driver's license or
14 identification card issued by a state;

15 (ii) an unexpired federal, state, or local
16 government identification card; or

17 (iii) an unexpired military identification
18 card for active duty, reserve, or retired personnel with an
19 identification photograph.

20 (b) Each contract with a state agency must include the
21 following statement:

22 "_____ (name of contractor) certifies that
23 _____ (name of contractor) is not ineligible to receive this
24 contract under Subchapter C, Chapter 2264, Government Code, and
25 acknowledges that if this certification is inaccurate, the
26 contractor may be barred from participating in state contracts."

27 (c) If a state agency determines that a contractor was

1 ineligible to have the contract awarded under Subsection (a), the
2 state agency shall refer the matter to the comptroller for action.

3 (d) Each state agency shall develop procedures for the
4 administration of this section.

5 Sec. 2264.103. BARRING FROM STATE CONTRACTS. (a) Using
6 procedures prescribed under Section 2155.077, the comptroller
7 shall bar a contractor from participating in state contracts if the
8 comptroller determines that the contractor was awarded a contract
9 in violation of Section 2264.102.

10 (b) Debarment under this section is for a period of one
11 year.

12 Sec. 2264.104. VERIFICATION BY GRANT RECIPIENTS. (a) A
13 state agency may not award a grant unless the grant recipient:

14 (1) registers with and participates in the E-verify
15 program to verify information of all new employees; or

16 (2) verifies the employment authorization status of
17 all new employees by requiring each employee to provide an
18 unexpired United States passport or:

19 (A) one of the following documents:

20 (i) an original or certified copy of a birth
21 certificate issued by a bureau of vital statistics for a state;

22 (ii) a Consular Report of Birth Abroad or
23 Certificate of Birth Abroad issued by the United States Department
24 of State;

25 (iii) a Certificate of United States
26 Citizenship issued by the federal Department of Homeland Security
27 or the United States Department of State including an

identification photograph; or

(iv) a Certificate of Naturalization issued by the federal Department of Homeland Security or the United States Department of State including an identification photograph; and

(B) one of the following documents:

(i) an unexpired driver's license or identification card issued by a state;

(ii) an unexpired federal, state, or local government identification card; or

(iii) an unexpired military identification card for active duty, reserve, or retired personnel with an identification photograph.

(b) Each grant contract or agreement with a state agency must include the following statement:

"_____ (name of grant recipient) certifies that _____ (name of grant recipient) is not ineligible to receive this grant under Subchapter C, Chapter 2264, Government Code, and acknowledges that if this certification is inaccurate, the grant may be terminated without further payment."

(c) If a state agency determines that a grant recipient was ineligible to have the grant awarded under Subsection (a), the state agency shall notify the grant recipient in writing that the grant recipient must comply with Subsection (a) before the 31st day after the date the grant recipient is notified.

(d) The state agency shall terminate the grant without further obligation to the grant recipient on the 31st day after the date the grant recipient is notified under Subsection (c) if,

before that date, the grant recipient has not provided evidence that the grant recipient has complied with Subsection (a).

(e) Each state agency shall develop procedures for the administration of this section.

SECTION 5. Subtitle B, Title 2, Labor Code, is amended by adding Chapter 53 to read as follows:

CHAPTER 53. EMPLOYMENT OF PERSONS NOT LAWFULLY PRESENT IN UNITED STATES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 53.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Texas Workforce Commission.

(2) "Employee" means an individual who is employed by an employer for compensation. The term includes an individual employed on a part-time basis.

(3) "Employer" means a person, other than a governmental entity, who:

(A) employs one or more employees; or

(B) acts directly or indirectly in the interests of an employer in relation to an employee.

(4) "Employment" means any service, including service in interstate commerce, that is performed for wages or under a contract of hire, whether written or oral or express or implied. The term does not include any service performed by an individual for wages if it is shown that the individual is free from control or direction in the performance of the service, both under any contract of service and in fact.

1 (5) "License" means a license, certificate,
2 registration, permit, or other authorization that:

3 (A) is issued by a licensing authority;

4 (B) is subject before expiration to renewal,
5 suspension, revocation, forfeiture, or termination by a licensing
6 authority; and

7 (C) is required for a person to practice or
8 engage in a particular business, occupation, or profession.

9 (6) "Licensing authority" means a department,
10 commission, board, office, or other agency of the state or a
11 political subdivision of the state that issues or renews a license.

12 (7) "Person not lawfully present" means a person who
13 at the time of employment is neither an alien who is lawfully
14 admitted for permanent residence in the United States under the
15 federal Immigration and Nationality Act (8 U.S.C. Section 1101 et
16 seq.) nor an individual who is authorized to be employed by that
17 Act.

18 Sec. 53.002. EMPLOYEE STATUS. An employer may not classify
19 an individual performing services for the employer as an
20 independent contractor instead of as an employee of the employer
21 solely for the purpose of avoiding the requirements applicable to
22 an employer under this chapter.

23 Sec. 53.003. LICENSING AUTHORITIES SUBJECT TO CHAPTER. All
24 licensing authorities are subject to this chapter.

25 Sec. 53.004. RULES. The commission shall adopt rules for
26 the administration of this chapter.

27 SUBCHAPTER B. LICENSE SUSPENSION FOR KNOWING EMPLOYMENT OF PERSON

NOT LAWFULLY PRESENT

Sec. 53.051. PROHIBITION AGAINST KNOWING EMPLOYMENT OF PERSON NOT LAWFULLY PRESENT; LICENSE SUSPENSION AUTHORIZED. (a) An employer may not knowingly employ a person not lawfully present.

(b) An employer who violates Subsection (a) is subject to the suspension of each license held by the employer as provided by this chapter.

Sec. 53.052. EXCEPTION. (a) In this section, "E-verify program" has the meaning assigned by Section 673.001, Government Code.

(b) An employer has not violated Section 53.051(a) if the employer verified the employment authorization status of the person not later than the third business day after the commencement of the employee's employment through the E-verify program.

SUBCHAPTER C. ADMINISTRATIVE PROVISIONS

Sec. 53.101. FILING COMPLAINT. (a) A person who has reason to believe that an employer has violated Section 53.051(a) may file a complaint with the commission in accordance with this subchapter.

(b) A complaint must:

(1) be in writing on a form prescribed by the commission; and

(2) be verified by the person making the complaint.

(c) A person may file a complaint under this section:

(1) in person at an office of the commission; or

(2) by mailing the complaint to an address designated by the commission.

Sec. 53.102. INVESTIGATION AND PRELIMINARY DISMISSAL ORDER

1 OR REFERRAL ORDER. (a) On receipt of a complaint, an examiner
2 employed by the commission shall investigate the complaint in an
3 attempt to:

4 (1) verify information regarding the immigration
5 status of the relevant employee or employees of the employer
6 alleged to have violated Section 53.051(a); and

7 (2) determine whether a hearing should be conducted.

8 (b) During the investigation, the employer alleged to have
9 violated Section 53.051(a) shall specify all licenses held by the
10 employer.

11 (c) If the examiner determines that there is no substantial
12 evidence that the employer violated Section 53.051(a), the examiner
13 shall issue a preliminary dismissal order dismissing the complaint.

14 (d) If the examiner determines that there is substantial
15 evidence that the employer violated Section 53.051(a), the examiner
16 shall refer the complaint to a hearing tribunal established under
17 Section 53.103.

18 (e) The examiner shall mail notice of the preliminary
19 dismissal order or referral order to each party at that party's last
20 known address, as reflected by commission records.

21 Sec. 53.103. ESTABLISHMENT OF HEARING TRIBUNALS. The
22 commission shall establish one or more impartial hearing tribunals
23 to hear and decide complaints under this chapter.

24 Sec. 53.104. REQUEST FOR HEARING ON PRELIMINARY DISMISSAL
25 ORDER. (a) A party may request a hearing before a hearing tribunal
26 to appeal a preliminary dismissal order made under Section
27 53.102(c).

1 (b) The request for the hearing must be made in writing not
2 later than the 21st day after the date the examiner mails the notice
3 of the preliminary dismissal order.

4 Sec. 53.105. PRELIMINARY DISMISSAL ORDER FINAL IF HEARING
5 NOT REQUESTED. If neither party requests a hearing to appeal a
6 preliminary dismissal order made under Section 53.102(c) within the
7 period prescribed by Section 53.104, the order becomes the final
8 order of the commission for all purposes, and neither party is
9 entitled to judicial review of the order under this subchapter.

10 Sec. 53.106. NOTICE OF AND TIME FOR HEARING. (a) A notice
11 regarding a hearing conducted under this subchapter must be mailed
12 by the hearing tribunal not later than the 21st day after the date
13 the referral order or request for the hearing is received by the
14 commission.

15 (b) As soon as practicable, but not later than the 45th day
16 after the date a notice is mailed under Subsection (a), the tribunal
17 shall conduct the hearing.

18 Sec. 53.107. HEARING PROCEDURES. (a) A hearing conducted
19 under this subchapter is subject to the rules and hearings
20 procedures used by the commission in the determination of a claim
21 for unemployment compensation benefits.

22 (b) The hearing is not subject to Chapter [2001](#), Government
23 Code.

24 Sec. 53.108. ORDER AFTER HEARING. (a) After a hearing, if
25 the hearing tribunal finds by clear and convincing evidence that
26 the employer has violated Section 53.051(a), the hearing tribunal
27 shall:

1 (1) for a first violation, enter a written order:

2 (A) requiring the employer to:

3 (i) terminate the employment of each
4 employee who is a person not legally present; and

5 (ii) file with the hearing tribunal, within
6 30 business days after the date the order is entered, a sworn
7 affidavit stating that the employer has terminated the employment
8 of each of those employees; and

9 (B) notifying the employer that failure to file
10 the affidavit required by Paragraph (A)(ii) will result in the
11 suspension of the employer's licenses as provided by Subdivision
12 (2); or

13 (2) for a second or subsequent violation, or on a
14 finding that an employer has failed to file an affidavit required by
15 Subdivision (1)(A)(ii), enter a written order suspending for a
16 period of one year any license held by the employer.

17 (b) After a hearing, if the hearing tribunal does not find
18 by clear and convincing evidence that the employer has violated
19 Section 53.051(a), the hearing tribunal shall enter a written order
20 dismissing the complaint.

21 Sec. 53.109. NOTICE TO PARTIES AND FINALITY OF HEARING
22 TRIBUNAL ORDER. (a) The hearing tribunal shall mail to each party to
23 the hearing notice of the tribunal's decision. The notice shall be
24 mailed to a party's last known address, as reflected by commission
25 records.

26 (b) The order of the hearing tribunal becomes final on the
27 14th day after the date the order is mailed unless a further appeal

1 to the commission is initiated as provided by this subchapter.

2 Sec. 53.110. REMOVAL OR TRANSFER OF COMPLAINT PENDING
3 BEFORE HEARING TRIBUNAL. (a) The commission by order may remove to
4 itself or transfer to another hearing tribunal the proceedings on a
5 complaint before a hearing tribunal.

6 (b) The commission promptly shall mail to the parties to the
7 affected hearing notice of the order under Subsection (a).

8 (c) A quorum of the commission shall hear a proceeding
9 removed to the commission under Subsection (a).

10 Sec. 53.111. COMMISSION REVIEW OF HEARING TRIBUNAL ORDER.
11 The commission may:

12 (1) on its own motion:

13 (A) affirm, modify, or set aside an order issued
14 under Section 53.108 on the basis of the evidence previously
15 submitted in the case; or

16 (B) direct the taking of additional evidence; or

17 (2) permit any of the parties affected by the order to
18 initiate an appeal before the commission.

19 Sec. 53.112. NOTICE OF COMMISSION ACTION TO PARTIES. (a)
20 The commission shall mail to each party to an appeal under Section
21 53.111 notice of:

22 (1) the commission's decision; and

23 (2) the parties' right to judicial review of the order.

24 (b) The notice shall be mailed to a party's last known
25 address, as reflected by commission records.

26 Sec. 53.113. FINALITY OF COMMISSION ORDER. An order of the
27 commission becomes final on the 14th day after the date the order is

1 mailed unless before that date:

2 (1) the commission by order reopens the appeal; or

3 (2) a party to the appeal files a written motion for
4 rehearing.

5 Sec. 53.114. JUDICIAL REVIEW. (a) A party who has exhausted
6 the party's administrative remedies under this chapter, other than
7 a motion for rehearing, may bring a suit to appeal the order.

8 (b) The suit must be filed not later than the 30th day after
9 the date the final order is mailed to the party.

10 (c) The commission and any other party to the proceeding
11 before the commission must be made defendants in the suit.

12 (d) The suit must be brought in the county of residence of
13 the party seeking judicial review. If the party is not a resident
14 of this state, the suit must be brought in the county in this state
15 in which the employer has its principal place of business.

16 (e) An appeal under this subchapter is by trial de novo with
17 the substantial evidence rule being the standard of review in the
18 manner as applied to an appeal from a final decision under Subtitle
19 A, Title 4.

20 Sec. 53.115. NOTICE TO LICENSING AUTHORITY OF FINAL ORDER
21 SUSPENDING LICENSE. The commission shall promptly mail to the
22 appropriate licensing authority a final order suspending a license
23 entered under this chapter.

24 SUBCHAPTER D. ACTION BY LICENSING AUTHORITIES

25 Sec. 53.151. ACTION BY LICENSING AUTHORITY. (a) On receipt
26 from the commission of a final order suspending a license, a
27 licensing authority shall immediately determine if the authority

1 has issued a license to the person named on the order and, if a
2 license has been issued:

3 (1) record the suspension of the license in the
4 licensing authority's records;

5 (2) report the suspension as appropriate; and

6 (3) demand surrender of the suspended license if
7 required by law for other cases in which a license is suspended.

8 (b) A licensing authority shall implement the terms of a
9 final order suspending a license without additional review or
10 hearing. The authority may provide notice as appropriate to the
11 license holder or to others concerned with the license.

12 (c) A licensing authority may not modify, remand, reverse,
13 vacate, or stay an order suspending a license issued under this
14 chapter and may not review, vacate, or reconsider the terms of a
15 final order suspending a license.

16 (d) A person who is the subject of a final order suspending a
17 license is not entitled to a refund for any fee or deposit paid to
18 the licensing authority.

19 (e) A person who continues to engage in the business,
20 occupation, profession, or other licensed activity after the
21 implementation of the order suspending a license by the licensing
22 authority is liable for the same civil and criminal penalties
23 provided for engaging in the licensed activity without a license or
24 while a license is suspended that apply to any other license holder
25 of that licensing authority.

26 (f) A licensing authority is exempt from liability to a
27 license holder for any act authorized under this chapter performed

1 by the authority.

2 (g) Except as provided by this chapter, an order suspending
3 a license does not affect the power of a licensing authority to
4 grant, deny, suspend, revoke, terminate, or renew a license.

5 (h) An order issued under this chapter to suspend a license
6 of a person applies to each license issued by the licensing
7 authority subject to the order for which the person is eligible.
8 The licensing authority may not issue or renew any other license for
9 the person during the suspension period.

10 Sec. 53.152. FEE BY LICENSING AUTHORITY. A licensing
11 authority may charge a fee to a person who is the subject of an order
12 suspending a license in an amount sufficient to recover the
13 administrative costs incurred by the authority under this chapter.

14 SECTION 6. Each state agency subject to Subchapter C,
15 Chapter 2264, Government Code, as amended by this Act, shall
16 develop the procedures required under Sections 2264.102 and
17 2264.104, Government Code, as added by this Act, as applicable, not
18 later than October 1, 2017.

19 SECTION 7. Sections 2264.1011, 2264.102, 2264.103, and
20 2264.104, Government Code, as added by this Act, apply only in
21 relation to a:

22 (1) contract for which the request for bids or
23 proposals or other applicable expressions of interest is made
24 public on or after the effective date of this Act; and

25 (2) grant for which the notice of funds availability
26 or of funding opportunity is made public on or after the effective
27 date of this Act.

1 SECTION 8. Chapter 53, Labor Code, as added by this Act,
2 applies only to a violation that occurs on or after the effective
3 date of this Act.

4 SECTION 9. This Act takes effect September 1, 2017.